

**ENDORSED  
FILED**

San Francisco County Superior Court

AUG 11 2011

CLERK OF THE COURT

BY: PARAM NATT  
Deputy Clerk

1 Stephen S. Sayad, State Bar No. 104866  
2 Clifford A. Chanler, State Bar No. 135534  
3 THE CHANLER GROUP  
4 81 Throckmorton Avenue, Suite 203  
5 Mill Valley, CA 94941  
6 Telephone: (415) 388-1132  
7 Facsimile: (415) 388-1135

8 Attorneys for Plaintiff  
9 JOHN MOORE

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
12 UNLIMITED CIVIL JURISDICTION

CGC - 11 - 513305

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 THE ASPEN BRANDS COMPANY; BABY  
17 ASPEN, INC.; and DOES 1-150, inclusive,

18 Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code. § 25249.6 *et seq.*)

BY FAX

**NATURE OF THE ACTION**

1  
2           1.     This Complaint is a representative action brought by plaintiff, JOHN MOORE, in  
3 the public interest of the citizens of the State of California, to enforce the People’s right to be  
4 informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in  
5 luggage tags sold by Defendants in California.

6           2.     By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to  
7 warn California citizens about reproductive toxicity associated with their exposures to DEHP  
8 present in or on certain luggage tags that defendants manufacture, import, distribute, and/or  
9 offer for sale to consumers throughout the State of California.

10          3.     High levels of DEHP are commonly found in and on the luggage tags that  
11 Defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of  
12 California.

13          4.     Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the  
15 course of doing business shall knowingly and intentionally expose any individual to a chemical  
16 known to the state to cause cancer or reproductive toxicity without first giving clear and  
17 reasonable warning to such individual ...” (Cal. Health & Safety Code, § 25249.6.)

18          5.     On October 24, 2003, California identified and listed DEHP as a chemical known  
19 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and  
20 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (Tit.  
21 27 Cal. Code Regs. (“CCR”) § 27001(c); Cal. Health & Safety Code §§ 25249.8 &  
22 25249.10(b).)

23          6.     Defendants manufacture, distribute, and/or offer for sale luggage tags containing  
24 excessive levels of DEHP including, but not limited to, *Kate Aspen Luggage Tag Air Plane (#8*  
25 *43905 06858 0)*. All such luggage tags containing DEHP shall hereinafter be referred to as the  
26 “PRODUCTS.”

27          7.     Defendants’ failure to warn consumers and/or other individuals in the State of  
28 California not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*

1 *seq.* about their exposures to DEHP and its potential to cause birth defects and other reproductive  
2 harm in conjunction with Defendants' distribution, importation, manufacturing, and/or sale of the  
3 PRODUCTS is a violation of Proposition 65 and subjects Defendants to enjoinder of such  
4 conduct as well as civil penalties (of up to \$2,500 per day) for each such violation.

5 8. For Defendants' violations of Proposition 65, Plaintiff seeks preliminary  
6 injunctive and permanent injunctive relief to compel defendants to provide purchasers or users  
7 of the PRODUCTS with the required warning regarding the health hazards of DEHP. (Cal.  
8 Health & Safety Code § 25249.7(a).)

9 9. Plaintiff also seeks civil penalties against Defendants for their violations of  
10 Proposition 65, as provided by California Health & Safety Code § 25249.7(b).

### 11 PARTIES

12 10. Plaintiff, JOHN MOORE, is a citizen of the State of California who is dedicated  
13 to protecting the health of California citizens through the elimination or reduction of toxic  
14 exposures from consumer products; he brings this action in the public interest pursuant to  
15 California Health & Safety Code § 25249.7(d).

16 11. Defendant THE ASPEN BRANDS COMPANY ("ASPEN") is a person in the  
17 course of doing business within the meaning of California Health & Safety Code § 25249.11.

18 12. Defendant ASPEN manufactures, distributes, and/or offers the PRODUCTS for  
19 sale or use in the State of California, or implies by its conduct that it manufactures, distributes,  
20 and/or offers the PRODUCTS for sale or use in the State of California.

21 13. Defendant BABY ASPEN, INC. ("BABY ASPEN") is a person in the course of  
22 doing business within the meaning of California Health & Safety Code § 25249.11.

23 14. Defendant BABY ASPEN manufactures, distributes, and/or offers the  
24 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
25 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of  
26 California.

1           15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each  
2 persons in the course of doing business within the meaning of California Health & Safety Code  
3 § 25249.11.

4           16. MANUFACTURER DEFENDANTS engage in the process of researching,  
5 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that  
6 they engage in the process of researching, testing, designing, assembling, fabricating, and/or  
7 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

8           17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
9 in the course of doing business within the meaning of California Health & Safety Code §  
10 25249.11.

11           18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
12 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
13 in the State of California.

14           19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in  
15 the course of doing business within the meaning of California Health & Safety Code §  
16 25249.11.

17           20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
18 State of California.

19           21. At this time, the true names of Defendants DOES 1 through 150, inclusive, are  
20 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to  
21 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that  
22 each of the fictitiously named defendants is responsible for the acts and occurrences alleged  
23 herein. When ascertained, their true names shall be reflected in an amended complaint.

24           22. ASPEN, BABY ASPEN, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
25 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
26 referred to as “DEFENDANTS.”

27  
28

1 **VENUE AND JURISDICTION**

2 23. Venue is proper in the San Francisco County Superior Court, pursuant to Code of  
3 Civil Procedure Sections 394, 395, & 395.5, because this Court is a court of competent  
4 jurisdiction, because one or more instances of wrongful conduct occurred, and continue to  
5 occur, in the County of San Francisco, and/or because DEFENDANTS conducted, and continue  
6 to conduct, business in this County with respect to the PRODUCTS.

7 24. The California Superior Court has jurisdiction over this action pursuant to  
8 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction  
9 in all causes except those given by statute to other trial courts.” The statute under which this  
10 action is brought does not specify any other basis of subject matter jurisdiction.

11 25. The California Superior Court has jurisdiction over DEFENDANTS based on  
12 Plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,  
13 or association that is a citizen of the State of California, has sufficient minimum contacts in the  
14 State of California, or otherwise purposefully avails itself of the California market.  
15 DEFENDANTS’ purposeful avilment renders the exercise of personal jurisdiction by  
16 California courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Proposition 65 - Against All Defendants)**

19 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
20 Paragraphs 1 through 25, inclusive.

21 27. The citizens of the State of California have expressly stated in the Safe Drinking  
22 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*  
23 that they must be informed “about exposures to chemicals that cause cancer, birth defects and  
24 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

25 28. Proposition 65 states, “[n]o person in the course of doing business shall  
26 knowingly and intentionally expose any individual to a chemical known to the state to cause  
27 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
28 individual....” (*Ibid.*)

1           29. On or about May 11, 2011, a sixty-day notice of violation, together with the  
2 requisite certificate of merit, was provided to ASPEN, BABY ASPEN, and various public  
3 enforcement agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS,  
4 purchasers and users in the State of California were being exposed to DEHP resulting from the  
5 reasonably foreseeable use of the PRODUCTS without the individual purchasers and users first  
6 having been provided with a "clear and reasonable warning" regarding such toxic exposures.

7           30. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
8 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and  
9 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use  
10 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
11 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
12 believes that such violations will continue to occur into the future.

13           31. After receipt of the claims asserted in the sixty-day notice of violation, the  
14 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
15 cause of action against DEFENDANTS under Proposition 65.

16           32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
17 California by DEFENDANTS contain DEHP in an amount above the allowable state limits.

18           33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
19 distributed, and/or offered for sale or use in California contain DEHP.

20           34. DEHP was present in or on the PRODUCTS in such a way as to expose  
21 individuals to DEHP through dermal contact and/or ingestion during the reasonably foreseeable  
22 use of the PRODUCTS.

23           35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
24 continues to cause, consumer exposures to DEHP, as such exposure is defined by Title 27 CCR  
25 § 25602(b).

26           36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
27 the PRODUCTS would expose individuals to DEHP through dermal contact and/or ingestion.  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

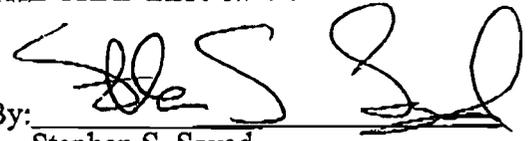
offering the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as defined by 27 CCR § 25601, as to the harms associated with exposure to DEHP;

- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: August 10, 2011

Respectfully submitted,

THE CHANLER GROUP

By: 

Stephen S. Sayad  
Attorneys for Plaintiff  
JOHN MOORE